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S&H Form: (02/05)

REPLY/AMENDMENT FEE TRANSMITTAL

Attorney Docket No.	1454.1497
Application Number	10/649,778
Filing Date	August 28, 2003
First Named Inventor	Stefan HOLZ et al.
Group Art Unit	2614
AMOUNT ENCLOSED	500.00
Examiner Name	ESCALANTE, OVIDIO

FEE CALCULATION (fees effective 12/08/04)

CLAIMS AS AMENDED	Claims Remaining After Amendment	Highest Number Previously Paid For	Number Extra	Rate	Calculations
TOTAL CLAIMS		- =	0	X \$ 50.00 =	\$ 0.00
INDEPENDENT CLAIMS		- =	0	X \$ 200.00 =	0.00

Since an Official Action set an original due date of June 4, 2007, petition is hereby made for an extension to cover the date this reply is filed for which the requisite fee is enclosed (1 month (\$120)); (2 months (\$450)); (3 months (\$1,020)); (4 months (\$1,590)); (5 months (\$2,160)):

If Appeal Brief is enclosed, add (\$500.00)	500.00
If Statutory Disclaimer under Rule 20(d) is enclosed, add fee (\$130.00)	
Information Disclosure Statement (Rule 1.17(p)) (\$180.00)	
Total of above Calculations =	\$ 500.00
Reduction by 50% for filing by small entity (37 CFR 1.9, 1.27 & 1.28)	
TOTAL FEES DUE =	\$ 500.00

- (1) If entry (1) is less than entry (2), entry (3) is "0".
(2) If entry (2) is less than 20, change entry (2) to "20".
(4) If entry (4) is less than entry (5), entry (6) is "0".
(5) If entry (5) is less than 3, change entry (5) to "3".

METHOD OF PAYMENT

- ☒ Check enclosed as payment.
☐ Charge "TOTAL FEES DUE" to the Deposit Account No. below.
☐ No payment is enclosed.

GENERAL AUTHORIZATION

- ☒ If the above-noted "AMOUNT ENCLOSED" is not correct, the Commissioner is hereby authorized to credit any overpayment or charge any additional fees necessary to:
- | | |
|----------------------|--------------------|
| Deposit Account No. | 19-3935 |
| Deposit Account Name | STAAS & HALSEY LLP |
- ☒ The Commissioner is also authorized to credit any overpayments or charge any additional fees required under 37 CFR 1.16 (filing fees) or 37 CFR 1.17 (processing fees) during the prosecution of this application, including any related application(s) claiming benefit hereof pursuant to 35 USC § 120 (e.g., continuations/divisionals/CIPs under 37 CFR 1.53(b) and/or continuations/divisionals/CPAs under 37 CFR 1.53(d)) to maintain pendency hereof or of any such related application.

SUBMITTED BY: STAAS & HALSEY LLP

Typed Name	Thomas E. McKiernan	Reg. No.	37,889
Signature		Date	23 MAY 07



Docket No.: 1454.1497

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Stefan HOLZ et al.

Serial No. 10/649,778

Group Art Unit: 2614

Confirmation No. 5851

Filed: August 28, 2003

Examiner: ESCALANTE, OVIDIO

For: **MANAGING INCOMING CALLS AND/OR MESSAGES IN A COMMUNICATIONS
SYSTEM**

Mail Stop - Appeal Brief - Patents

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37

Dear Sir:

The following comprises the Appellants' Brief on Appeal from the final rejection, dated January 5, 2007, of claims 1 and 3-10. This Appeal Brief is accompanied by the required appeal fee set forth in 37 C.F.R. § 41.20(b)(2). Appellants' Notice of Appeal was filed on April 4, 2007. Therefore, the present Appeal Brief is timely filed.

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Application Serial No. 10/649,778
Appellant's Brief on Appeal under 37 C.F.R. § 41.37 dated May 23, 2007
Appeal of final Office Action dated January 5, 2007

I. REAL PARTY IN INTEREST

The above-captioned application is assigned in its entirety to SIEMENS AKTIENGESELLSCHAFT, having a corporate situs of Wittelsbacherplatz 2, D-80333 Munich, Germany.

II. RELATED APPEALS AND INTERFERENCES

Appellants state that, upon information and belief, Appellants are not aware of any co-pending appeal or interference that will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1 and 3-10 are pending in the application. Claim 2 was cancelled. Claims 1 and 3-10 were rejected. The rejection of claims 1 and 3-10 is being appealed.

IV. STATUS OF AMENDMENTS

No amendments were filed subsequent to the final rejection. One Response was filed on February 7, 2007, to which the Examiner replied with a Advisory Action mailed March 5, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

1. Independent claim 1:

Independent claim 1 is directed to a method of managing incoming calls and/or messages in a communications system. In step 101 of the method, a pre-defined availability status 202 is allocated to a predetermined recipient of a call and/or message, as shown in Figs. 1 and 2, and as described at page 3, lines 17-22 and page 4, lines 10-20. In step 103 of the method, the pre-defined availability status 202 is checked upon receipt of a call and/or message to see if it is activated, as shown in Figs. 1 and 2, and as described at page 3, lines 25, 26, and 27. In step 104 of the method, upon activation of the pre-defined availability status 202, a pre-defined filter rule 203 is applied to the call and/or message in accordance with the activated availability status 202, as shown in Figs. 1 and 2, and as described at page 3, lines 28, 29, and 30, continuing at page 4, lines 1, 2, 3, 27, 28, and 29. Finally, in step 105 of the method, a call and/or message handling action 204 associated with the activated availability status 202 is executed, as shown in Figs. 1 and 2, and as described at page 4, lines 4-8 and page 5, lines 27-30. The availability status 202 is selectable for activation by the predetermined recipient of the call and/or message, as described at page 3, lines 17 and 18.

2. Independent claim 9:

Independent claim 9 is directed to an apparatus for managing incoming calls and/or messages in a communications system. In the apparatus, a pre-defined availability status 202 is allocated to a predetermined recipient of a call and/or message, as shown in Fig. 2 and described at page 4, lines 10-20. The apparatus includes means for checking, upon receipt of a call and/or message, if the pre-defined availability status 202 allocated to the predetermined recipient of the call and/or message is activated, as shown in Fig. 2 and described at page 3, lines 25, 26, and 27. The means for checking corresponds to a call/message management controller 301 shown in Fig. 3 and described at page 7, lines 30 and 31, continuing at page 8, lines 1-6 and 9-29. The apparatus also includes means for applying, upon activation of a pre-defined availability status 202, a pre-defined filter rule 203 to the call and/or message in accordance with the activated availability status 202, as shown in Fig. 2 and described at page 3, lines 28, 29, and 30, continuing at page 4, lines 1, 2, and 3. The means for applying corresponds to a unified messaging system 303 in combination with the call/message management controller 301 shown in Fig. 3 and described at page 7, lines 27-31, continuing at

page 8, lines 1-6 and 9-29. Finally, the apparatus includes means for executing a call and/or message handling action 204 associated with the activated availability status 202, as shown in Fig. 2 and described at page 4, lines 4-8. The means for executing corresponds to a call/message management controller 301 shown in Fig. 3 and described at page 7, lines 30 and 31, continuing at page 8, lines 1-6 and 9-29. The availability status 202 is selectable for activation by the predetermined recipient of the call and/or message, as described at page 3, lines 17 and 18.

3. Independent claim 10:

Independent claim 10 is directed to a computer program product 314 stored on a computer usable medium, as shown in Fig. 3 and described at page 8, lines 17-29. In the computer program, a pre-defined availability status 202 is allocated to a predetermined recipient of a call and/or message, as shown in Fig. 2 and described at page 4, lines 10-20. The computer program includes computer readable means for causing a computer to check, upon receipt of a call and/or message, if the pre-defined availability status 202 allocated to the predetermined recipient of the call and/or message is activated, as shown in Fig. 2 and described at page 3, lines 25, 26, and 27. The means for causing a computer to check corresponds to a call/message management controller 301 shown in Fig. 3 and described at page 7, lines 30 and 31, continuing at page 8, lines 1-6 and 9-29. The computer program also includes computer readable means for causing the computer to apply, upon activation of a pre-defined availability status 202, a pre-defined filter rule 203 to the call and/or message in accordance with the activated availability status 202, as shown in Fig. 2 and described at page 3, lines 28, 29, and 30, continuing at page 4, lines 1, 2, and 3. The means for causing the computer to apply corresponds to a unified messaging system 303 in combination with the call/message management controller 301 shown in Fig. 3 and described at page 7, lines 27-31, continuing at page 8, lines 1-6 and 9-29. Finally, the computer program also includes computer readable means for causing the computer to execute a call and/or message handling action 204 associated with the activated availability status 202, as shown in Fig. 2 and described at page 4, lines 4-8. The means for causing the computer to execute corresponds to a call/message management controller 301 shown in Fig. 3 and described at page 7, lines 30 and 31, continuing at page 8, lines 1-6 and 9-29. The availability status 202 is selectable for activation by the predetermined recipient of the call and/or message, as described at page 3, lines 17 and 18.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are to be reviewed in this Appeal:

1. The rejection of claims 1 and 3-10 under 35 U.S.C. § 102(e) as anticipated by US Patent Application Publication No. 2003/0135569 to Khakoo et al. (hereinafter "Khakoo").
2. The rejection of claims 5 and 8 under 35 U.S.C. § 103(a) as unpatentable over Khakoo in view of U.S. Patent Publication No. 2003/0076941 to Tiliks et al. (hereinafter "Tiliks").

VII. ARGUMENTS

1. Claims 1 and 3-10 are not anticipated by Khakoo.

A. Independent claim 1:

Independent claim 1 is not anticipated by Khakoo because Khakoo fails to disclose all of the features of independent claim 1. Khakoo, for example, discloses no availability status that is "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1. In Khakoo, rather, messages are delivered to one or more intended recipients based on their presence, preferences or location. In particular, as described in paragraph [0006]:

Generally, a method and apparatus are disclosed that deliver messages to one or more intended recipients based on the presence, preferences or location of the recipient(s).

Since, in Khakoo, messages are delivered to one or more intended recipients based on their presence, preferences or location, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1.

Moreover, in Khakoo, instant message are delivered to one or more intended recipients based on the presence, preferences or location of the recipients. In particular, as described in paragraph [0018]:

In addition, the instant message delivery server 100 employs an instant message delivery process 300, discussed further below in conjunction with FIG. 3, to process and deliver each instant message to one or more intended recipients based on the presence, preferences or location of the recipient(s).

Since, in Khakoo, instant message are delivered to one or more intended recipients based on the presence, preferences or location of the recipients, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1.

Furthermore, in Khakoo, the *presence database 200* maintains information for each user in the community, including the availability of each user to receive instant messages. There is no evidence in Khakoo that *users* have any control over the information maintained in the presence database 200 at all. In particular, as described at the beginning of paragraph [0018]:

As shown in FIG. 1, the instant message delivery server 100 maintains a presence database 200, discussed below in conjunction with FIG. 2, to record

information for each user in the community, including the availability of each user to receive instant messages.

Since, in Khakoo, the presence database 200 maintains information for each user in the community, including the availability of each user to receive instant messages, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1.

Moreover, in Khakoo, the *presence database 200* maintains information for each user in the community, including the availability of each user to receive instant messages. There is no evidence in Khakoo that *users* have any control over the information maintained in the presence database 200 at all. In particular, as described in paragraph [0020]:

As indicated above, the presence database 200 maintains information for each user in the community, including the availability of each user to receive instant messages. As shown in FIG. 2, the presence database 200 includes a plurality of records, such as record 210, each associated with a different user.

Since, in Khakoo, the presence database 200 maintains information for each user in the community, including the availability of each user to receive instant messages, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1.

In addition, in Khakoo, the *presence database 200* indicates the user's presence in field 240. There is no evidence in Khakoo that *users* have any control over whether their presence is indicated or not. In particular, as described further in paragraph [0020]:

For each user, identified, for example, by name in field 230, the presence database 200 indicates the user's presence in field 240, corresponding device address and capabilities in fields 250 and 260, respectively, and the user's voice mailbox in field 270.

Since, in Khakoo, the presence database 200 indicates the user's presence in field 240, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1.

Furthermore, in Khakoo, the *presence entry in field 240* indicates whether the user is present at a given device registered for the user. There is no evidence in Khakoo that *users* have any control over whether their presence is indicated in the presence entry in field 240 or not. In particular, as described further in paragraph [0020]:

The presence entry in field 240 indicates whether the user is present at a given

device registered for the user. The device address in field 250 indicates the address of each device that is available for receiving instant messages for the user. The address can be any location or connection means, such as a phone number or URL, for example. The device capability in field 260 indicates the capability of the device, such as whether the device is text or voice or video capable (or some combination of the foregoing), including email and fax capable devices. Finally, the voice mailbox in field 270 indicates the address of the voice mailbox for the user.

Since, in Khakoo, the presence entry in field 240 indicates whether the user is present at a given device registered for the user, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1.

Also, in Khakoo, the instant message delivery server 100 performs a *test* during step 310 to determine if the recipient is available. The fact that the instant message delivery server 100 has to perform a test to determine if the recipient is available militates against the user's availability status being "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1. In particular, as described at the end of paragraph [0022]:

The instant message delivery server 100 performs a test during step 310 to determine if the recipient is available.

Since, in Khakoo, the instant message delivery server 100 performs a test during step 310 to determine if the recipient is available, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1.

Furthermore, in Khakoo, the instant message delivery server 100 can perform language translation to automatically synthesize the text message in a human language *preferred* by the user. Thus, the "user's preferences," in Khakoo pertain to the *language* into which the message is translated for delivery to the user, not the *availability status* of the user. In particular, as described at the end of paragraph [0018]:

In a further variation, the instant message delivery server 100 can perform language translation to automatically synthesize the text message in a human language preferred by the user.

Since the "user's preferences," in Khakoo pertain to the *language* into which the message is translated for delivery to the user, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1.

Moreover, in Khakoo, each SIP device or endpoint specifies the preferences of its user

as a weighted list of media types and human languages. Thus, the "user's preferences," in Khakoo pertain to a weighted list of media types and human languages, not the availability status of the user. In particular, as described at the end of paragraph [0028]:

Moreover, SIP allows each SIP device or endpoint to specify the preferences of its user as a weighted list of media types and human languages. Senders are asked to provide, from the media types and human languages that they have available, the most highly weighted media type and human language.

Since the "user's preferences," in Khakoo pertain to a weighted list of media types and human languages, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1.

In addition, in Khakoo, messages are queued if the intended recipient is *unable* to receive them. Conversely, if the recipient is *able* to receive messages, then the recipient is *available* to receive them. There is nothing selective about the user's availability status in Khakoo. In particular, as described further in paragraph [0016]:

If the intended recipient is temporarily unable to receive the message, for example, the message is queued for delivery until the recipient indicates availability.

Since, in Khakoo, the presence database 200 indicates the user's presence in field 240, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1.

Finally, in Khakoo, if the user attempts to *select* their availability status by not answering the call, an error occurs. In particular, as described at the end of paragraph [0023]:

Likewise, if it is determined during step 340 that the user does not answer the call placed during step 335, then an error is encountered during step 350.

Since, in Khakoo, if the user does not answer the call placed during step 335, then an error is encountered, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1.

The Examiner asserts in section 7 of the final Office Action mailed January 5, 2007, in the second full paragraph at page 6, that:

Starting from paragraph 0020, Khakoo teaches that the presence database maintains information for each user which indicates whether or not a user is present at a certain device. Following to the next paragraph, Khakoo states that the presence is update based on a detection of the "manual registration by the

user". Hence when the user manually registers with e.g. the instant messaging service then the user is selectively activating the presence at the device and thus the presence database will reflect this information as taught in paragraph 0020.

The fifth clause of independent claim 1, however, recites the *availability* status, not simply the *presence* of the user. Thus, even if, as asserted by the Examiner, the user is selectively activating their *presence* at the device when the user manually registers with the instant messaging service, that still would not amount to the user's *availability status* being "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1. Since the user's availability status is "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1, a user can be present at a device, but unavailable to receive a call or a message. In Khakoo, on the other hand, if the user is determined to be present, then the user is available.

Paragraph [0021] of Khakoo, in any case, *only* describes the instant message delivery server 100 updating the *presence* and device address entries of the user when the user registers, i.e. signs on, manually. The availability status is still not selectable by the user in Khakoo, let alone "selectable for activation by the predetermined recipient of the calling and/or message." The availability of the user to receive instant messages in Khakoo, rather, is determined completely by the user's presence on the instant message delivery server 100, not by any selection on the part of the user. In Khakoo, if the user is determined to be present, then the user is available. In particular, as described at paragraph [0021]:

Thus, the instant message delivery server 100 is always able to determine whether a user is available.

Since, in Khakoo, the instant message delivery server 100 is always able to determine whether a user is available, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1.

Furthermore, the manual registration process in Khakoo only allows a user to *prioritize* the indicated device and presence information, thereby allowing instant messages to be delivered in accordance with the user's *preferences*, not select an availability status. The "user's preferences," in Khakoo pertain to the language into which the message is translated for delivery to the user, as discussed above, not the availability status of the user. In particular, as described further at paragraph [0021]:

In addition, the manual registration process allows a user to prioritize the indicated device and presence information, thereby allowing instant messages to

be delivered in accordance with the user's preferences.

Since, in Khakoo, the user can only prioritize the indicated device and presence information, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1.

The Examiner asserts at page 2 of the Advisory Action mailed March 5, 2007 that:

Khakoo teaches selectively activating an availability status by a user.

This is submitted to be incorrect. In Khakoo, rather, the presence database 200 maintains information for each user in the community, including the availability of each user to receive instant messages, as discussed above. There is no evidence in Khakoo that users have any control over the information maintained in the presence database 200 at all.

The Examiner asserts further at page 2 of the Advisory Action mailed March 5, 2007 that:

It is clear that the user can selectively register a presence status address, e.g. to manually entering an address next to a presence status to indicate that he is available (availability status activated) to receive a message at that address, or by not entering any address to indicate that he is not available (availability status deactivated) to receive any message (see paragraphs 0020-0021).

This is also submitted to be incorrect. In Khakoo, rather, the instant message delivery server 100 is always able to determine whether a user is available. Thus, if the user is determined to be *present*, then the user is available. In particular, as described at paragraph [0021]:

Thus, the instant message delivery server 100 is always able to determine whether a user is available.

Since, in Khakoo, the instant message delivery server 100 is always able to determine whether a user is available, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1.

Furthermore, manually entering an address next to a presence status to indicate that the user is available to receive a message at that *address* does not amount to the user's availability status *itself* being "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1. In Khakoo, rather, the *address* at which the user is available is simply the device to which the instant messages will be *forwarded*.

If the user is present in Khakoo, the user will be available, even if the user indicates no address, since the instant message delivery server 100 is always able to determine whether a

user is available. If the user is present but indicates no device address, rather, the instant message delivery server 100 will still determine whether the user is available, the instant messages will just not be forwarded to another address. In particular, as described at paragraph [0021]:

If present, the server 100 is able to determine the address at which the user is available and the capabilities of the device at the address.

Since, in Khakoo, the instant message delivery server 100 is always able to determine whether a user is available, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 1.

Accordingly, because Khakoo fails to disclose all of the features of independent claim 1, the Examiner has failed to set forth a prima facie case of anticipation of independent claim 1 by Khakoo. Appellants, therefore, request respectfully that the rejection of independent claim 1 be withdrawn.

B. Independent claim 9:

Independent claim 9 is not anticipated by Khakoo because Khakoo fails to disclose all of the features of independent claim 9. Khakoo, for example, discloses no availability status that is "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9. In Khakoo, rather, messages are delivered to one or more intended recipients based on their presence, preferences or location. In particular, as described in paragraph [0006]:

Generally, a method and apparatus are disclosed that deliver messages to one or more intended recipients based on the presence, preferences or location of the recipient(s).

Since, in Khakoo, messages are delivered to one or more intended recipients based on their presence, preferences or location, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9.

Moreover, in Khakoo, instant message are delivered to one or more intended recipients based on the presence, preferences or location of the recipients. In particular, as described in paragraph [0018]:

In addition, the instant message delivery server 100 employs an instant message delivery process 300, discussed further below in conjunction with FIG. 3, to process and deliver each instant message to one or more intended recipients based on the presence, preferences or location of the recipient(s).

Since, in Khakoo, instant message are delivered to one or more intended recipients based on the presence, preferences or location of the recipients, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9.

Furthermore, in Khakoo, the *presence database 200* maintains information for each user in the community, including the availability of each user to receive instant messages. There is no evidence in Khakoo that *users* have any control over the information maintained in the presence database 200 at all. In particular, as described at the beginning of paragraph [0018]:

As shown in FIG. 1, the instant message delivery server 100 maintains a presence database 200, discussed below in conjunction with FIG. 2, to record information for each user in the community, including the availability of each user to receive instant messages.

Since, in Khakoo, the presence database 200 maintains information for each user in the community, including the availability of each user to receive instant messages, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9.

Moreover, in Khakoo, the *presence database 200* maintains information for each user in the community, including the availability of each user to receive instant messages. There is no evidence in Khakoo that *users* have any control over the information maintained in the presence database 200 at all. In particular, as described in paragraph [0020]:

As indicated above, the presence database 200 maintains information for each user in the community, including the availability of each user to receive instant messages. As shown in FIG. 2, the presence database 200 includes a plurality of records, such as record 210, each associated with a different user.

Since, in Khakoo, the presence database 200 maintains information for each user in the community, including the availability of each user to receive instant messages, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9.

In addition, in Khakoo, the *presence database 200* indicates the user's presence in field 240. There is no evidence in Khakoo that *users* have any control over whether their presence is indicated or not. In particular, as described further in paragraph [0020]:

For each user, identified, for example, by name in field 230, the presence

database 200 indicates the user's presence in field 240, corresponding device address and capabilities in fields 250 and 260, respectively, and the user's voice mailbox in field 270.

Since, in Khakoo, the presence database 200 indicates the user's presence in field 240, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9.

Furthermore, in Khakoo, the *presence entry in field 240* indicates whether the user is present at a given device registered for the user. There is no evidence in Khakoo that *users* have any control over whether their presence is indicated in the presence entry in field 240 or not. In particular, as described further in paragraph [0020]:

The presence entry in field 240 indicates whether the user is present at a given device registered for the user. The device address in field 250 indicates the address of each device that is available for receiving instant messages for the user. The address can be any location or connection means, such as a phone number or URL, for example. The device capability in field 260 indicates the capability of the device, such as whether the device is text or voice or video capable (or some combination of the foregoing), including email and fax capable devices. Finally, the voice mailbox in field 270 indicates the address of the voice mailbox for the user.

Since, in Khakoo, the presence entry in field 240 indicates whether the user is present at a given device registered for the user, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9.

Also, in Khakoo, the instant message delivery server 100 performs a *test* during step 310 to determine if the recipient is available. The fact that the instant message delivery server 100 has to perform a test to determine if the recipient is available militates against the user's availability status being "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9. In particular, as described at the end of paragraph [0022]:

The instant message delivery server 100 performs a test during step 310 to determine if the recipient is available.

Since, in Khakoo, the instant message delivery server 100 performs a test during step 310 to determine if the recipient is available, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9.

Furthermore, in Khakoo, the instant message delivery server 100 can perform language

translation to automatically synthesize the text message in a human language *preferred* by the user. Thus, the "user's preferences," in Khakoo pertain to the *language* into which the message is translated for delivery to the user, not the *availability status* of the user. In particular, as described at the end of paragraph [0018]:

In a further variation, the instant message delivery server 100 can perform language translation to automatically synthesize the text message in a human language preferred by the user.

Since the "user's preferences," in Khakoo pertain to the *language* into which the message is translated for delivery to the user, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9.

Moreover, in Khakoo, each SIP device or endpoint specifies the preferences of its user as a weighted list of media types and human languages. Thus, the "user's preferences," in Khakoo pertain to a weighted list of media types and human languages, not the availability status of the user. In particular, as described at the end of paragraph [0028]:

Moreover, SIP allows each SIP device or endpoint to specify the preferences of its user as a weighted list of media types and human languages. Senders are asked to provide, from the media types and human languages that they have available, the most highly weighted media type and human language.

Since the "user's preferences," in Khakoo pertain to a weighted list of media types and human languages, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9.

In addition, in Khakoo, messages are queued if the intended recipient is *unable* to receive them. Conversely, if the recipient is *able* to receive messages, then the recipient is *available* to receive them. There is nothing selective about the user's availability status in Khakoo. In particular, as described further in paragraph [0016]:

If the intended recipient is temporarily unable to receive the message, for example, the message is queued for delivery until the recipient indicates availability.

Since, in Khakoo, the presence database 200 indicates the user's presence in field 240, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9.

Finally, in Khakoo, if the user attempts to *select* their availability status by not answering the call, an error occurs. In particular, as described at the end of paragraph [0023]:

Likewise, if it is determined during step 340 that the user does not answer the call placed during step 335, then an error is encountered during step 350.

Since, in Khakoo, if the user does not answer the call placed during step 335, then an error is encountered, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9.

The Examiner asserts in section 7 of the final Office Action mailed January 5, 2007, in the second full paragraph at page 6, that:

Starting from paragraph 0020, Khakoo teaches that the presence database maintains information for each user which indicates whether or not a user is present at a certain device. Following to the next paragraph, Khakoo states that the presence is update based on a detection of the "manual registration by the user". Hence when the user manually registers with e.g. the instant messaging service then the user is selectively activating the presence at the device and thus the presence database will reflect this information as taught in paragraph 0020.

The fifth clause of independent claim 9, however, recites the *availability* status, not simply the *presence* of the user. Thus, even if, as asserted by the Examiner, the user is selectively activating their *presence* at the device when the user manually registers with the instant messaging service, that still would not amount to the user's *availability status* being "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9. Since the user's availability status is "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9, a user can be present at a device, but unavailable to receive a call or a message. In Khakoo, on the other hand, if the user is determined to be present, then the user is available.

Paragraph [0021] of Khakoo, in any case, *only* describes the instant message delivery server 100 updating the *presence* and device address entries of the user when the user registers, i.e. signs on, manually. The availability status is still not selectable by the user in Khakoo, let alone "selectable for activation by the predetermined recipient of the calling and/or message." The availability of the user to receive instant messages in Khakoo, rather, is determined completely by the user's presence on the instant message delivery server 100, not by any selection on the part of the user. In Khakoo, if the user is determined to be present, then the user is available. In particular, as described at paragraph [0021]:

Thus, the instant message delivery server 100 is always able to determine whether a user is available.

Since, in Khakoo, the instant message delivery server 100 is always able to determine whether a

user is available, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9.

Furthermore, the manual registration process in Khakoo only allows a user to *prioritize* the indicated device and presence information, thereby allowing instant messages to be delivered in accordance with the user's *preferences*, not select an availability status. The "user's preferences," in Khakoo pertain to the language into which the message is translated for delivery to the user, as discussed above, not the availability status of the user. In particular, as described further at paragraph [0021]:

In addition, the manual registration process allows a user to prioritize the indicated device and presence information, thereby allowing instant messages to be delivered in accordance with the user's preferences.

Since, in Khakoo, the user can only prioritize the indicated device and presence information, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9.

The Examiner asserts at page 2 of the Advisory Action mailed March 5, 2007 that:

Khakoo teaches selectively activating an availability status by a user.

This is submitted to be incorrect. In Khakoo, rather, the presence database 200 maintains information for each user in the community, including the availability of each user to receive instant messages, as discussed above. There is no evidence in Khakoo that users have any control over the information maintained in the presence database 200 at all.

The Examiner asserts further at page 2 of the Advisory Action mailed March 5, 2007 that:

It is clear that the user can selectively register a presence status address, e.g. to manually entering an address next to a presence status to indicate that he is available (availability status activated) to receive a message at that address, or by not entering any address to indicate that he is not available (availability status de-activated) to receive any message (see paragraphs 0020-0021).

This is also submitted to be incorrect. In Khakoo, rather, the instant message delivery server 100 is always able to determine whether a user is available. Thus, if the user is determined to be *present*, then the user is available. In particular, as described at paragraph [0021]:

Thus, the instant message delivery server 100 is always able to determine whether a user is available.

Since, in Khakoo, the instant message delivery server 100 is always able to determine whether a user is available, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9.

Furthermore, manually entering an address next to a presence status to indicate that the user is available to receive a message at that *address* does not amount to the user's availability status *itself* being "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9. In Khakoo, rather, the *address* at which the user is available is simply the device to which the instant messages will be *forwarded*.

If the user is present in Khakoo, the user will be available, even if the user indicates no address, since the instant message delivery server 100 is always able to determine whether a user is available. If the user is present but indicates no device address, rather, the instant message delivery server 100 will still determine whether the user is available, the instant messages will just not be forwarded to another address. In particular, as described at paragraph [0021]:

If present, the server 100 is able to determine the address at which the user is available and the capabilities of the device at the address.

Since, in Khakoo, the instant message delivery server 100 is always able to determine whether a user is available, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 9.

Accordingly, because Khakoo fails to disclose all of the features of independent claim 9, the Examiner has failed to set forth a prima facie case of anticipation of independent claim 9 by Khakoo. Appellants, therefore, request respectfully that the rejection of independent claim 9 be withdrawn.

C. Independent claim 10:

Independent claim 10 is not anticipated by Khakoo because Khakoo fails to disclose all of the features of independent claim 10. Khakoo, for example, discloses no availability status that is "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10. In Khakoo, rather, messages are delivered to one or more intended recipients based on their presence, preferences or location. In particular, as described in paragraph [0006]:

Generally, a method and apparatus are disclosed that deliver messages to one or more intended recipients based on the presence, preferences or location of the

recipient(s).

Since, in Khakoo, messages are delivered to one or more intended recipients based on their presence, preferences or location, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10.

Moreover, in Khakoo, instant message are delivered to one or more intended recipients based on the presence, preferences or location of the recipients. In particular, as described in paragraph [0018]:

In addition, the instant message delivery server 100 employs an instant message delivery process 300, discussed further below in conjunction with FIG. 3, to process and deliver each instant message to one or more intended recipients based on the presence, preferences or location of the recipient(s).

Since, in Khakoo, instant message are delivered to one or more intended recipients based on the presence, preferences or location of the recipients, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10.

Furthermore, in Khakoo, the *presence database 200* maintains information for each user in the community, including the availability of each user to receive instant messages. There is no evidence in Khakoo that *users* have any control over the information maintained in the presence database 200 at all. In particular, as described at the beginning of paragraph [0018]:

As shown in FIG. 1, the instant message delivery server 100 maintains a presence database 200, discussed below in conjunction with FIG. 2, to record information for each user in the community, including the availability of each user to receive instant messages.

Since, in Khakoo, the presence database 200 maintains information for each user in the community, including the availability of each user to receive instant messages, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10.

Moreover, in Khakoo, the *presence database 200* maintains information for each user in the community, including the availability of each user to receive instant messages. There is no evidence in Khakoo that *users* have any control over the information maintained in the presence database 200 at all. In particular, as described in paragraph [0020]:

As indicated above, the presence database 200 maintains information for each user in the community, including the availability of each user to receive instant

messages. As shown in FIG. 2, the presence database 200 includes a plurality of records, such as record 210, each associated with a different user.

Since, in Khakoo, the presence database 200 maintains information for each user in the community, including the availability of each user to receive instant messages, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10.

In addition, in Khakoo, the *presence database 200* indicates the user's presence in field 240. There is no evidence in Khakoo that *users* have any control over whether their presence is indicated or not. In particular, as described further in paragraph [0020]:

For each user, identified, for example, by name in field 230, the presence database 200 indicates the user's presence in field 240, corresponding device address and capabilities in fields 250 and 260, respectively, and the user's voice mailbox in field 270.

Since, in Khakoo, the presence database 200 indicates the user's presence in field 240, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10.

Furthermore, in Khakoo, the *presence entry in field 240* indicates whether the user is present at a given device registered for the user. There is no evidence in Khakoo that *users* have any control over whether their presence is indicated in the presence entry in field 240 or not. In particular, as described further in paragraph [0020]:

The presence entry in field 240 indicates whether the user is present at a given device registered for the user. The device address in field 250 indicates the address of each device that is available for receiving instant messages for the user. The address can be any location or connection means, such as a phone number or URL, for example. The device capability in field 260 indicates the capability of the device, such as whether the device is text or voice or video capable (or some combination of the foregoing), including email and fax capable devices. Finally, the voice mailbox in field 270 indicates the address of the voice mailbox for the user.

Since, in Khakoo, the presence entry in field 240 indicates whether the user is present at a given device registered for the user, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10.

Also, in Khakoo, the instant message delivery server 100 performs a *test* during step 310 to determine if the recipient is available. The fact that the instant message delivery server 100 has to perform a test to determine if the recipient is available militates against the user's

availability status being "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10. In particular, as described at the end of paragraph [0022]:

The instant message delivery server 100 performs a test during step 310 to determine if the recipient is available.

Since, in Khakoo, the instant message delivery server 100 performs a test during step 310 to determine if the recipient is available, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10.

Furthermore, in Khakoo, the instant message delivery server 100 can perform language translation to automatically synthesize the text message in a human language *preferred* by the user. Thus, the "user's preferences," in Khakoo pertain to the *language* into which the message is translated for delivery to the user, not the *availability status* of the user. In particular, as described at the end of paragraph [0018]:

In a further variation, the instant message delivery server 100 can perform language translation to automatically synthesize the text message in a human language preferred by the user.

Since the "user's preferences," in Khakoo pertain to the *language* into which the message is translated for delivery to the user, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10.

Moreover, in Khakoo, each SIP device or endpoint specifies the preferences of its user as a weighted list of media types and human languages. Thus, the "user's preferences," in Khakoo pertain to a weighted list of media types and human languages, not the availability status of the user. In particular, as described at the end of paragraph [0028]:

Moreover, SIP allows each SIP device or endpoint to specify the preferences of its user as a weighted list of media types and human languages. Senders are asked to provide, from the media types and human languages that they have available, the most highly weighted media type and human language.

Since the "user's preferences," in Khakoo pertain to a weighted list of media types and human languages, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10.

In addition, in Khakoo, messages are queued if the intended recipient is *unable* to receive them. Conversely, if the recipient is *able* to receive messages, then the recipient is

available to receive them. There is nothing selective about the user's availability status in Khakoo. In particular, as described further in paragraph [0016]:

If the intended recipient is temporarily unable to receive the message, for example, the message is queued for delivery until the recipient indicates availability.

Since, in Khakoo, the presence database 200 indicates the user's presence in field 240, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10.

Finally, in Khakoo, if the user attempts to *select* their availability status by not answering the call, an error occurs. In particular, as described at the end of paragraph [0023]:

Likewise, if it is determined during step 340 that the user does not answer the call placed during step 335, then an error is encountered during step 350.

Since, in Khakoo, if the user does not answer the call placed during step 335, then an error is encountered, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10.

The Examiner asserts in section 7 of the final Office Action mailed January 5, 2007, in the second full paragraph at page 6, that:

Starting from paragraph 0020, Khakoo teaches that the presence database maintains information for each user which indicates whether or not a user is present at a certain device. Following to the next paragraph, Khakoo states that the presence is update based on a detection of the "manual registration by the user". Hence when the user manually registers with e.g. the instant messaging service then the user is selectively activating the presence at the device and thus the presence database will reflect this information as taught in paragraph 0020.

The fifth clause of independent claim 10, however, recites the *availability* status, not simply the *presence* of the user. Thus, even if, as asserted by the Examiner, the user is selectively activating their *presence* at the device when the user manually registers with the instant messaging service, that still would not amount to the user's *availability status* being "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10. Since the user's availability status is "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10, a user can be present at a device, but unavailable to receive a call or a message. In Khakoo, on the other hand, if the user is determined to be present, then the user is available.

Paragraph [0021] of Khakoo, in any case, *only* describes the instant message delivery server 100 updating the *presence* and device address entries of the user when the user registers, *i.e.* signs on, manually. The availability status is still not selectable by the user in Khakoo, let alone "selectable for activation by the predetermined recipient of the calling and/or message." The availability of the user to receive instant messages in Khakoo, rather, is determined completely by the user's presence on the instant message delivery server 100, not by any selection on the part of the user. In Khakoo, if the user is determined to be present, then the user is available. In particular, as described at paragraph [0021]:

Thus, the instant message delivery server 100 is always able to determine whether a user is available.

Since, in Khakoo, the instant message delivery server 100 is always able to determine whether a user is available, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10.

Furthermore, the manual registration process in Khakoo only allows a user to *prioritize* the indicated device and presence information, thereby allowing instant messages to be delivered in accordance with the user's *preferences*, not select an availability status. The "user's preferences," in Khakoo pertain to the language into which the message is translated for delivery to the user, as discussed above, not the availability status of the user. In particular, as described further at paragraph [0021]:

In addition, the manual registration process allows a user to prioritize the indicated device and presence information, thereby allowing instant messages to be delivered in accordance with the user's preferences.

Since, in Khakoo, the user can only prioritize the indicated device and presence information, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10.

The Examiner asserts at page 2 of the Advisory Action mailed March 5, 2007 that:

Khakoo teaches selectively activating an availability status by a user.

This is submitted to be incorrect. In Khakoo, rather, the presence database 200 maintains information for each user in the community, including the availability of each user to receive instant messages, as discussed above. There is no evidence in Khakoo that users have any control over the information maintained in the presence database 200 at all.

The Examiner asserts further at page 2 of the Advisory Action mailed March 5, 2007 that:

It is clear that the user can selectively register a presence status address, e.g. to manually entering an address next to a presence status to indicate that he is available (availability status activated) to receive a message at that address, or by not entering any address to indicate that he is not available (availability status deactivated) to receive any message (see paragraphs 0020-0021).

This is also submitted to be incorrect. In Khakoo, rather, the instant message delivery server 100 is always able to determine whether a user is available. Thus, if the user is determined to be *present*, then the user is available. In particular, as described at paragraph [0021]:

Thus, the instant message delivery server 100 is always able to determine whether a user is available.

Since, in Khakoo, the instant message delivery server 100 is always able to determine whether a user is available, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10.

Furthermore, manually entering an address next to a presence status to indicate that the user is available to receive a message at that *address* does not amount to the user's availability status *itself* being "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10. In Khakoo, rather, the *address* at which the user is available is simply the device to which the instant messages will be *forwarded*.

If the user is present in Khakoo, the user will be available, even if the user indicates no address, since the instant message delivery server 100 is always able to determine whether a user is available. If the user is present but indicates no device address, rather, the instant message delivery server 100 will still determine whether the user is available, the instant messages will just not be forwarded to another address. In particular, as described at paragraph [0021]:

If present, the server 100 is able to determine the address at which the user is available and the capabilities of the device at the address.

Since, in Khakoo, the instant message delivery server 100 is always able to determine whether a user is available, the user's availability status is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in independent claim 10.

Accordingly, because Khakoo fails to disclose all of the features of independent claim 10, the Examiner has failed to set forth a prima facie case of anticipation of independent claim 10 by

Khakoo. Appellants, therefore, request respectfully that the rejection of independent claim 10 be withdrawn.

2. Dependent claims 5 and 8 are patentable over Khakoo in view of Tiliks.

First, dependent claims 5 and 8 are patentable over is Khakoo in view of Tiliks because neither Khakoo nor Tiliks, nor their combination, disclose all of the features of dependent claims 5 and 8.

Dependent claims 5 and 8 depend from independent claim 1 and add further distinguishing elements. Khakoo discloses no availability status that is "selectable for activation by the predetermined recipient of the call and/or message," as discussed above with respect to the rejection of independent claim 1. Tiliks does not either, and thus cannot make up for the deficiencies of Khakoo with respect to claims 5 and 8.

In Tiliks, rather, calls are connected if the telephone number from which they originate matches no number on a restricted list. In particular, as described in paragraph [0056]:

When the outside telephone number does not match the at least one restricted telephone number, the call is connected between the subscriber telephone number and the outside telephone number. When the outside telephone number matches the at least one restricted telephone number, the call data is stored and entry of the personal identification number is requested.

Since, in Tiliks, calls are connected if the telephone number from which they originate matches no number on a restricted list; the availability status in Tiliks is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in dependent claims 5 and 8.

All that matters in Tiliks, if the telephone number is restricted, is whether the recipient *has* the personal identification number, not the availability of a predetermined recipient. The recipient may be all ready and waiting to receive the call, i.e. he may be more than available. If he can't produce the PIN, however, he doesn't get to talk. This is to be contrasted with dependent claims 5 and 8 which recite "wherein the availability status is selectable for activation by the predetermined recipient of the call and/or message." Thus, even if Khakoo and Tiliks were combined, as proposed by the Examiner, the claimed invention would not result.

Accordingly, because neither Khakoo nor Tiliks, nor their combination, disclose all of the features of dependent claims 5 and 8, the Examiner has failed to set forth a prima facie case of obviousness of dependent claims 5 and 8 by Khakoo in view of Tiliks. Appellants, therefore, request respectfully that the rejection of dependent claims 5 and 8 be withdrawn.

Second, dependent claims 5 and 8 are patentable over Khakoo in view of Tiliks because the Examiner has not made out a prima facie case of obviousness with respect to the combination of Khakoo in view of Tiliks proposed by the Examiner.

The test for obviousness under 35 U.S.C. § 103 (a) is set forth by the United States Supreme Court in *Graham v. John Deere, Co.*, 383 U.S. 1, 17-18 (1966). As mandated therein, in an obviousness determination under 35 U.S.C. § 103, the scope and content of the prior art are to be determined, the differences between the prior art and the claims at issue are to be ascertained and the level of ordinary skill in the pertinent art resolved. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577 (Fed. Cir. 1984). A suggestion, teaching or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." *C.R. Bard, Inc. v. MP3 Sys., Inc.*, 157 F.3d 1340, 1352 (Fed. Cir. 1998). "When a rejection depends on a combination of prior art references, there must be some teaching, suggestion, or motivation to combine the references." *In re Rouffet*, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998). Furthermore, the suggestion must be clear and particular; broad conclusory statements about the teaching of multiple references, standing alone, are not "evidence." *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120 (Fed. Cir. 2000). "The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies." *In re Lee*, 277 F.3d 1338, 1344, 61 U.S.P.Q.2d 1430,1434 (Fed. Cir. 2002).

Here, the Examiner has pointed to no evidence, either in the references or the general knowledge of the prior art, of a suggestion or motivation to combine the references in the proposed manner. The broad conclusory statement by the Examiner in section 6, in the fifth full paragraph at page 5 of the final Office Action mailed January 5, 2007, that:

Therefore, it would have been obvious to a one of ordinary skill in the art at the time the invention was made to modify Khakoo by routing the messages to destination associated with an entry in the personal scheduler is taught by Tiliks so that the message recipient can easily change their schedule and rules for receiving messages and/or calls.

in particular, is not "evidence" of a suggestion or motivation to combine the references as required for a finding of obviousness. Rather, it is simply hindsight reasoning, a simple regurgitation of the claimed invention itself.

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Appeal of final Office Action dated January 5, 2007

There is no disclosure in Khakoo of an availability status that is "selectable for activation by the predetermined recipient of the call and/or message," in the first place, as discussed above. Thus, even if Khakoo and Tiliks were combined, as proposed by the Examiner, dependent claims 5 and 8 would not result. It is submitted, therefore, that persons of ordinary skill in the art at the time the invention was made would not have been motivated to modify Khakoo as proposed by the Examiner, since the combination would not compensate for the deficiency of Khakoo with respect to dependent claims 5 and 8.

Accordingly, because the Examiner has not made out a prima facie case of obviousness with respect to the combination of Khakoo in view of Tiliks proposed by the Examiner, dependent claims 5 and 8 are patentable over Khakoo in view of Tiliks. Appellants, therefore, request respectfully that the rejection of dependent claims 5 and 8 be withdrawn.

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**CONTINGENT AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT AND CONTINGENT
PETITION FOR EXTENSION OF TIME**

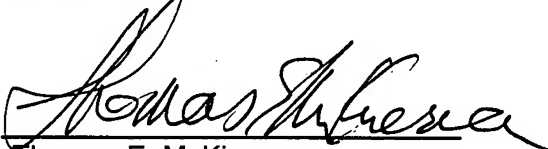
Unless a check for the present Brief on Appeal is submitted herewith for the fee required under 37 C.F.R. § 41.20(b)(2), please charge said fee to Deposit Account No. 19-3935.

Appellants hereby petition for any extension of time that may be required to maintain the pendency of this case, and any required fee for such extension is to be charged to Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: 23 May 07

By: 
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VIII. CLAIMS APPENDIX

1. (previously presented) A Method of managing incoming calls and/or messages in a communications system comprising the steps of:

upon receipt of a call and/or message checking if a pre-defined availability status allocated to a predetermined recipient of the call and/or message is activated;

upon activation of a pre-defined availability status applying a pre-defined filter rule to the call and/or message in accordance with the activated availability status; and

executing a call and/or message handling action associated with the activated availability status;

wherein the availability status is selectable for activation by the predetermined recipient of the call and/or message.

3. (previously presented) A Method as set forth in claim 1, wherein only one availability status is activated at a time.

4. (Original) A Method as set forth in claim 1, wherein any call and/or message is signalled and routed to the recipient by applying the filter rule relating to an availability status in which the recipient is prepared to receive calls and/or messages.

5. (Original) A Method as set forth in claim 1, wherein only calls and/or messages originating from a pre-determined set of callers and/or senders are signalled and forwarded to the recipient by applying the filter rule.

6. (Original) A Method as set forth in claim 1, wherein any call and/or message is forwarded to an other pre-defined recipient by executing the call and/or message handling action.

7. (Original) A Method as set forth in claim 1, wherein the call and/or message handling action comprises notifying the recipient of attempted communication by means of a message directed to a selected communication device allocated to the recipient.

8. (Original) A Method as set forth in claim 1, wherein the call and/or message is

routed to a destination associated with an entry in a personal scheduler of the recipient.

9. (previously presented) An Apparatus for managing incoming calls and/or messages in a communications system comprising:

means for checking, upon receipt of a call and/or message, if a pre-defined availability status allocated to a predetermined recipient of the call and/or message is activated;

means for applying, upon activation of a pre-defined availability status, a pre-defined filter rule to the call and/or message in accordance with the activated availability status; and

means for executing a call and/or message handling action associated with the activated availability status;

wherein the availability status is selectable for activation by the predetermined recipient of the call and/or message.

10. (previously presented) A Computer program product stored on a computer usable medium comprising:

computer readable means for causing a computer to check, upon receipt of a call and/or message, if a pre-defined availability status allocated to a predetermined recipient of the call and/or message is activated;

computer readable means for causing the computer to apply, upon activation of a pre-defined availability status, a pre-defined filter rule to the call and/or message in accordance with the activated availability status; and

computer readable means for causing the computer to execute a call and/or message handling action associated with the activated availability status;

wherein the availability status is selectable for activation by the predetermined recipient of the call and/or message.

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IX. EVIDENCE APPENDIX

None.

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X. RELATED PROCEEDINGS APPENDIX

None.